

***A REVIEW OF FEDERAL AND STATE LAWS
ADDRESSING THE EDUCATION OF CHILDREN WITH DISABILITIES***

Executive Summary

***Susan Mielke
with
Edie Harding***

December 1994

**A REVIEW OF FEDERAL AND STATE LAWS
ADDRESSING THE EDUCATION OF CHILDREN WITH DISABILITIES
Executive Summary**

Overview

Federal legislation has established federal financial assistance programs to assist states in educating children with disabilities. Over the years, Congress has established requirements that must be met in order for states to receive federal funds for special education programs.

The 1975 Education for All Handicapped Children Act was renamed the Individuals with Disabilities Education Act (IDEA) by Congress in 1990. The IDEA provides federal financial assistance to states that choose to provide a special education program for children with disabilities that complies with federal requirements.

There are additional federal statutes (the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities Act (ADA) of 1991, and the Civil Rights Act of 1871 (Section 1983)) that may provide further rights for special education students, and for students who do not qualify for special education but who have disabilities.

Federal law requires the state to: assure that school districts evaluate each identified child to determine eligibility for special education, provide appropriate special education services to children with disabilities, establish due process procedures to help parents and students get the appropriate special education services, and perform some administrative functions for special education programs.

The current state statutes and rules impose virtually the same procedural requirements on school districts as those required by federal law. The main differences, between federal and state requirements, are that the state defines specific eligibility criteria for each disability category and requires the evaluation to identify a child's disability within one of the disability categories.

The state constitution, as interpreted by the Washington State Supreme Court in 1978, requires the state to define and fully fund basic education. Through legislative definition, special education is part of the state's basic education responsibility.

Service Delivery Requirements

Federal law requires the following:

- **School districts must identify, locate and evaluate all children ages 0-21 who have a disability, and who by reason of the disability need special education services.** An evaluation must be conducted by a team of educators and must consist of procedures administered individually to each child, not standardized tests administered to a class, grade, or school. Instead, the district is required to identify the special education and related services the child requires to meet the child's unique educational needs. However, the state must report, by disability categories, the number of children with disabilities receiving special education services.
- **If the evaluation shows that a child needs special education services, the state must make available a free and appropriate public education.** The United States Supreme Court defined an appropriate education as one that is specially designed to meet the unique needs of the child with a disability, is reasonably calculated to enable the child to receive educational benefits, and is provided at public expense. A school district is not required to maximize the potential of each child. School districts may not refuse to provide appropriate services solely because the services are expensive.
- **An appropriate public education is tailored to the unique needs of the child through the process of developing an individualized education program (IEP).** Federal law provides a process that must be followed to develop and review an IEP. The process requires certain people be involved and certain content be included in developing and reviewing the IEP. An IEP is not intended to be detailed enough to be used as an instructional plan, but is used to set the general direction of the special education services to be provided. The IEP is **not** a guarantee that the child will progress at a specified rate.
- **Appropriate educational services must be provided in the least restrictive environment.** The general trend of the courts is to first look at whether the child can be satisfactorily educated in regular classes with the use of supplementary aids and services. Courts have used the following factors in determining whether the child should be placed outside of the regular classroom: (1) the academic benefits of the alternative placements; (2) the nonacademic benefits (e.g., social, behavioral) to the child of the interaction with children without disabilities; (3) the impact of the presence of the child with disabilities on the teacher and the other children in the regular classroom; and (4) the cost of supplementary aids and services necessary to mainstream the child with a disability in a regular classroom setting.
- **There must be a system to assure an adequate supply of qualified personnel to meet the needs of children with disabilities.** The system must include personnel development for regular and special education personnel.

Funding Requirements

- **Federal funds for special education are distributed to states based upon a set amount per identified student for up to a maximum of 12 percent of each state's K-12 enrollment.** These funds may not be used to supplant other federal, state or local funds that would be expended for special education, unless the state can provide clear and convincing evidence that all children with disabilities within the state have a free and appropriate public education available. The same level of expenditures (total or average per capita amount) of state and local funds for the education of children with disabilities must be expended as in the preceding fiscal year, with allowances made for decreases in enrollment and major, long-term expenditures. The state must assure a maintenance of effort from year to year.
- **The state must distribute at least 75 percent of the federal funds received for special education to the local school districts or regional educational consortiums.** The amount of federal funds a school district receives is based upon the percent of children with disabilities the district serves. The state may retain up to 25 percent of the federal funds for administration, monitoring and complaint investigation, and providing direct services.
- **The Washington State Legislature is required to fund special education in full as part of its basic education program.** The state funding formula allocates money to fourteen different categories of special education children based on a formula that includes differing staff ratios. The funding formula must reflect, as reasonably as practicable, the actual cost of the special education program. Once the legislature has established full funding for the special education program it has defined, it may not reduce such funding simply to save money. The legislature is required to review, evaluate, and revise its definition of basic education, and its funding, on an ongoing basis to insure that current needs of the state's students are met. The State Superior Court has found that a funding formula based upon the state average number of children with disabilities that does not reflect the actual number of children with disabilities in a school district will require a "safety net."

Administrative Requirements

Federal statutes require that the state must:

- **Establish due process procedures to help parents and children with disabilities get the appropriate special education services.** These procedures include the right to have the child identified; to examine the child's identification and evaluation records; the right to notification of any change in the child's identification, evaluation, or placement; and the right to challenge the identification, evaluation, placement or provision of services. If the parent is still unsatisfied, he/she has the right to bring a civil lawsuit.
- **Keep records and report on the number and type of children and personnel participating in special education programs.** The required data includes: the number of children receiving special education services within each disability category, and the number and type of personnel providing special education services within each disability category.
- **Evaluate and assure compliance of the special education programs.** States may determine the evaluation standards used. The state looks at whether the school district has complied with the federal procedural requirements. Non-compliance with the federal requirements may result in the state withholding federal aid to the school district until compliance is assured.
- **Evaluate and assure compliance at the federal level.** Non-compliance with the federal requirements may result in the withholding of federal funds, requiring the state to provide additional educational services at public expense even beyond the age of 21, reimbursement to parents for tuition and expenses of alternative placement of the student with a disability when an appropriate public education is not available, and theoretically, the award of compensatory money damages.

A Chronology of Federal Legislation

Addressing the Education of Children with Disabilities

1966

ESEA Amendments

The Elementary and Secondary Education Act of 1965 (ESEA) was amended to establish a grant program to assist states in educating children with disabilities.

1970

EHA

The Education of the Handicapped Act (EHA) was passed and the 1966 ESEA Amendments were repealed. This Act established a new grant program to assist the states in initiating, expanding and improving programs for the education of children with disabilities.

1974

EHA Amendments

Education of the Handicapped Act Amendments were passed in 1974 following several notable lawsuits, with the intent of increasing federal funding and the requirement that states receiving the federal funds must adopt a goal of providing full educational opportunities to all children with disabilities.

1975

EAHC

Education for All Handicapped Children Act of 1975 (EAHC) added additional eligibility

requirements for the states seeking federal funds. States are required to develop comprehensive state plans which must be approved by the U.S. Office of Education before the state can receive federal dollars.

1986

EHA Amendments

Amendments to the Education of the Handicapped Act authorized federal grants for the development of statewide systems to provide services to infants and toddlers with disabilities (birth to 2 years of age).

1986

HCPA

Handicapped Children's Protection Act of 1986 (HCPA) included the provision for the recovery of attorney's fees by parents who prevailed in lawsuits brought under the Act.

1990

IDEA

The Education for all Handicapped Children Act was renamed the "*Individuals with Disabilities Education Act*" (IDEA) and the term "*handicapped children*" was replaced with "*children with disabilities*." The IDEA also expanded the eligibility categories, expanded the definition of related services,

and formally defined and required transition services to post-school activities for children with disabilities.

1991

IDEA Amendments

Amendments to the Individuals with Disabilities Education Act were passed that require transition services to the programs in the K-12 education system for infants and toddlers participating in the early intervention program.

Three additional federal statutes that may impose additional duties on school districts to provide further rights for children with disabilities:

1871

Section 1983

Section 1983 of the Civil Rights Act of 1871 provides a legal cause of action when a state or local government employee, acting in their official capacity, violates a person's constitutional or legal rights. Both the IDEA and Section 504 of the Rehabilitation Act could be enforced through a Section 1983 claim.

1973

Section 504

Section 504 of the Rehabilitation Act prohibits discrimination on the basis of disability in all programs, including school systems, receiving federal financial assistance. The Office of Civil Rights of the Department of Education put into effect regulations under Section 504 that specifically address the education of children with disabilities. These regulations apply to a broader student population than the population addressed by the IDEA, and define “*disability*” and “*free appropriate public education*” in broader terms than the IDEA. (Thus, Section 504 may provide additional rights for special education students and for students who do not qualify as special education students but who have disabilities.)

1991

ADA

Title II of the Americans with Disabilities Act of 1991 (ADA) applies to a broader student population than in Section 504. Whereas Section 504’s prohibition on discrimination applies only to entities receiving federal funds for programs or activities, Title II of the ADA’s prohibition on discrimination applies to *any* state or local government, including all school districts.

State Laws Governing the Education of Children With Disabilities

1889

Article IX

Article IX of the Washington State Constitution provides that the paramount duty of the state is to make ample provision for the education of all children residing within its borders.

1971

EOHC

The Educational Opportunities for Handicapped Children provided that all handicapped children shall have the opportunity for an appropriate education at public expense as guaranteed by the state constitution.

SELECTED WASHINGTON STATE COURT CASES:

1977

(Washington State Superior Court of Thurston County)

Seattle School District v. State of Washington

The court found that the state had not met its constitutional obligations or duties to provide an ample education to all resident children, since the state relied on local districts' special excess levies for school funding.

This decision was upheld by the Washington Supreme Court in 1978, which found that under the state constitution, the duty of the state to make ample provision for the education of children residing within its borders is the paramount duty of the state. The court found in order to meet this duty, the state legislature must define a basic education program and fully fund that program. Referred to as **School Funding I**.

1983

(Washington State Superior Court of Thurston County)

Seattle School District v. State of Washington

Referred to as **School Funding II**. The conclusions of the court included: The program of education that the state legislature is required to define and fund includes adequate special programs for children with disabilities; basic education programs, including those for children with disabilities, must have funding that reflects costs and numbers of students eligible for the education programs; and the legislature is required to review, evaluate, and revise its definition of basic education on an ongoing basis and its funding to insure that current needs of the state's students are met. The court's conclusions were not appealed.

1987

(Washington State Superior Court of Thurston County)

Washington State Special Education Coalition v. State of Washington

Referred to as **School Funding III**. The conclusions of the court included: That the legislature decides the method of funding the basic education program, including special education, and that the funding must evolve and undergo change in order to reflect changing public policy and patterns; and the legislature may, but is not constitutionally required to, fund special education by means of a single formula. The court's conclusions were not appealed.